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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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25920	7590	07/12/2005	EXAMINER	
MARTINE PENILLA & GENCARELLA, LLP 710 LAKEWAY DRIVE SUITE 200 SUNNYVALE, CA 94085			HYUN, SOON D	
			ART UNIT	PAPER NUMBER
			2663	

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/753,797

Applicant(s)

PARRUCK ET AL.

Examiner

Soon D. Hyun

Art Unit

2663

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 22-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 22, 27, and 30, the claimed subject matter "the sorting is performed based on solely on inputs from the prior level" (lines 8-9) is being indefinite, because it is not clear whether the prior level refers to the priority level of the plurality of queues or a level before the plurality of queues. According to the specification page 16, lines 11-12, sorting is performed at the queues (192).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 22-31 are rejected under 35 U.S.C. 102(e) as being anticipated by Ganmukhi et al (U.S. Patent No.5,850,399).

Regarding claim 22 and 30, Ganmukhi et al (Ganmukhi) discloses a traffic shaping method using a hierarchical scheduler 10 (FIG. 1). An input 15 of the scheduler sorts a plurality of queues, each queue including a plurality of cells associated with a session of 14, 16, 18 (a communication device), wherein the plurality of queues are arranged according to a QoS (a weight and a data rate, col. 4, lines 14-41) associated with each of the plurality of cells, resulting in a plurality of sorted queues of queues (rtVBR queues for sessions 14, nrt VBR queues for sessions 18, ABR Queues for sessions 18), and wherein the sorting is performed based solely on inputs from a prior level (rtVBR, nrtVBR, or ABR). Each of the first level schedulers (30, 40, 50) regulates an aggregate output of cells from each sorted queues of queues based upon the data rates of the plurality of queues (col. 4, line 53-col. 5, line 11). The second level scheduler (80) schedules the regulated aggregate output of cells from each sorted queue of queues based upon a weight of the each sorted queues of queues (col. 5, lines 12-20), such that the scheduled output is coupled to the output path (82) of each respective level to a next level (second level), wherein the scheduled output conforms to a plurality of characteristics of a network connections 100 (col. 5, lines 21-30).

Regarding claims 23, and 27, Ganmukhi further discloses that each session 14, 16, 18 has an associated virtual connection.

Regarding claim 24, Ganmukhi does not explicitly disclose a plurality of input ports coupled to the sessions, but the input ports coupled to the sessions are inherently required for the scheduler because the ports are sorting the cells into the plurality of queues according to QoS.

Regarding claims 25, 26, 28, and 29, Ganmukhi further discloses that the scheduler is used for switching in an ATM network, i.e., the scheduler is an ATM switch (col. 3, lines 20-28), thus, the ATM switch (the data transmitting device) is capable of outputting data encapsulated in cells.

Regarding claim 31, Ganmukhi et al (Ganmukhi) discloses a traffic shaping method for a data scheduler (FIG. 1). The scheduler comprises: a plurality of queues in each level (at input 15, first level, second level), each of the plurality of queues are arranged according to a QoS (a weight and a data rate, col. 4, lines 14-41) associated with each of the plurality of cells; a plurality of queues of queues (rtVBR queues for sessions 14, nrt VBR queues for sessions 18, ABR Queues for sessions 18) in each level, and the plurality of queues being coupled to the plurality of queues of queues, such that the queues of the plurality of queues having a substantially equal weight being coupled to a same queue of queues of the plurality of queue of queues; a plurality of traffic shapers (20, 30, 40, 50), each of the plurality of queues being input to an associated traffic shapers; a scheduler (80), the plurality of traffic shapers being input to the scheduler, the scheduler being coupled to an output path (82), wherein the scheduler is used for switching in an ATM network, i.e., the scheduler is an ATM switch (col. 3, lines 20-28).

Response to Arguments

5. Applicant's arguments filed 04/22/2005 have been fully considered but they are not persuasive.

Applicant argues that Ganmukhi does not teach the claimed subject matter "sorting is performed solely on inputs from the prior level." Examiner disagrees, as discussed above, Ganmukhi teaches the claimed subject matter.

Therefore, Examiner believes that the claim rejection is proper.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Soon D. Hyun whose telephone number is 571-272-3121. The examiner can normally be reached on M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Q. Ngo can be reached on 571-272-3139. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


S. Hyun
07/05/2005


RICKY NGO
PRIMARY EXAMINER

7/6/05